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OFFICE OF PETITIONS

In re Patent No. 7,135,862 :
Issue Date: November 14, 2006 :
Application No. 09/803,819 : DECISION DISMISSING
Filed: March 13, 2001 : PETITION UNDER 37 CFR 1.10(c)
Attorney Docket No. 7420-081-999 :

This is a decision on the petition filed April 23, 2007, which is properly treated as a petition under 37 CFR 1.10(c) requesting that the above-identified application be considered as filed on March 12, 2001, which is the "date-in" or other official USPS notation on the Express Mail Mailing Label, instead of the currently accorded filing date of March 13, 2001.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely (see 37 CFR 1.181(f)). No extensions of time pursuant to the provisions of 37 CFR 1.136 are permitted.

37 CFR 1.10(c) sets forth procedures for filing a petition to the Director for a filing date as of the date of deposit with the USPS, where there is a discrepancy between the filing date initially accorded by the Office and the "date in" entered by the USPS or other official USPS notation.

To be grantable, a petition must:

- (1) be filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) include a showing that the number of the "Express Mail" mailing label was placed on each piece of correspondence prior to the original mailing; and
- (3) include a true copy of the "Express Mail" mailing label showing the "date in" or other official notation by the USPS.

This petition lacks item (1) above.

Petitioner requests the filing date of March 12, 2001 on the basis that there is a discrepancy between the filing date the USPTO has currently accorded this application and the "date-in" or other official USPS notation on the "Express Mail" mailing label.

Petitioner has failed to establish that this petition was filed promptly. A review of the record shows that the request for an earlier filing date was not raised throughout the prosecution of the application. The issue of the filing date was not raised until after the patent issued. A justification for the delay in seeking the correction of the filing date has not been provided. Further, the Office has limited jurisdiction once an application has issued as a patent.

Accordingly, the request to correct the filing date is dismissed.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
 Attn: Office of Petitions

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3215.



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